

An appeal

- by -

Superior Asphalt Paving Ltd.  
(“Superior”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**TRIBUNAL MEMBER:** Shafik Bhalloo

**FILE No.:** 2015A/142

**DATE OF DECISION:** December 18, 2015

## DECISION

### SUBMISSIONS

T.J. Singh

on behalf of Superior Asphalt Paving Ltd.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Superior Asphalt Paving Ltd. (“Superior”) has filed an appeal of a determination issued by a delegate of the Director of Employment Standards (the “Director”) on September 23, 2015 (the “Determination”).
2. The Determination concluded that Superior, Key-West Asphalt Ltd. (“Key-West”) and Superwest Asphalt Ltd. (“Superwest”), (collectively, the “Employer”), were “associated employers” under section 95 of the *Act* and, accordingly, were jointly and separately (severally) liable for contraventions of Part 3, section 18 (payment of wages on termination); Part 4, section 40 (overtime); Part 5, section 45 (statutory holiday pay); Part 7, section 58 (vacation pay); and Part 8, section 63 (compensation for length of service) of the *Act* in respect of the employment of Dale Kasper (“Mr. Kasper”) and Ranjit Lalli (“Mr. R. Lalli”), (collectively, the “Complainants”), and ordered the Employer to pay the Complainants wages and interest in the amount of \$54,572.36, inclusive of accrued interest under section 88 of the *Act*.
3. The Determination also levied two (2) administrative penalties of \$500.00 each against the Employer for contraventions of sections 18 and 40 of the *Act*.
4. The total amount of the Determination is \$55,572.36.
5. Superior has appealed the Determination on the sole ground that the Director has erred in law in making the Determination.
6. Superior is seeking the Employment Standards Tribunal (the “Tribunal”) to change or vary the Determination by removing Superior as an associated employer. Superior is effectively asking the Tribunal to cancel the Determination against it.
7. By way of a letter dated November 3, 2015, the Tribunal informed the Complainants and the Director that it had received an appeal by Superior, dated November 2, 2015, and enclosed the same for information purposes only. In the same letter the Tribunal also requested the Director to provide the section 112(5) “record” (the “Record”) by November 18, 2015.
8. On November 6, 2015, the Tribunal received the Record from the Director and forwarded the same to Superior, and provided the latter an opportunity to object to its completeness. On November 20, 2015, T.J. Singh (“Mr. Singh”), acting as agent or representative of Superior, informed the Tribunal that the Record was complete.
9. I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. At this stage, I will assess this appeal based solely on the Reasons for the Determination (the “Reasons”), the appeal submissions of Superior, and my review of the Record that was before the Director when the Determination was being made. Under section 114 of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing of any kind, for any reason listed in subsection 114(1). If satisfied the appeal, or part of it,

has some presumptive merit and should not be dismissed under section 114(1), the Tribunal will invite the Complainants and the Director to file reply submissions on the appeal. Superior will then be given an opportunity to make a final reply to these submissions, if any.

## ISSUE

10. The issue to be considered at this stage of the proceedings is whether all or part of the appeal should be dismissed under section 114 of the *Act*.

## THE FACTS

11. The facts delineated below are based on a summary of the facts found in the Reasons.
12. The Complainants filed their complaints under section 74 of the *Act*, alleging that Key-West contravened the *Act* by failing to pay them regular wages, overtime, annual vacation pay and compensation for length of service (the “Complaints”).
13. In the ensuing investigation, the delegate conducted BC Online Corporate Registry searches of Key-West, Superior, and Superwest on March 23 and April 13, 2015, respectively. The corporate search of Key-West showed that it was incorporated on January 1, 2009, and Raghbir Dhatt (“Mr. Dhatt”) was its sole director. The corporate search of Superior showed that it was incorporated on March 28, 1988, and its sole director was Harjit Lalli (“Mr. H. Lalli”). The corporate search of Superwest showed that it was incorporated on February 24, 2012, and its directors are Mr. Dhatt and Mr. H. Lalli.
14. In 2012, the two (2) asphalt companies, Superior and Key-West, formed a “joint venture” which created Superwest. Superior and Key-West each owned 50% of the asphalt plant assets, and Superwest operated the asphalt plant, producing and selling asphalt mix.
15. At around the same time, in 2012, Superwest entered into a lease agreement with the Upper Sumas Indian Reserve No. 6 to lease the latter’s land at #202 – 6333 148<sup>th</sup> Street, Surrey, British Columbia (the “Sumas Property”).
16. On September 18, 2013, Key-West and Superior executed a Joint Venture Agreement (the “JV Agreement”), dated August 26, 2013. The JV Agreement defined, among other things, the following: formation of joint venture, relationship between joint venturers, equal interest between joint venturers in the joint venture assets, joint venture committee, right of first refusal, financial matters, purchase of asphalt products and other asphalt related business, transfer of the asphalt plant and Bank of Montreal refinancing.
17. Along with the execution of the JV Agreement, Superior and Key-West signed a Bill of Sale through their respective directors, Mr. H. Lalli and Mr. Dhatt, on September 18, 2013. According to the Bill of Sale, Key-West purchased equipment and chattels located on the Sumas Property from Superior for the sum of \$10.00.
18. Subsequently, in 2014, a dispute arose between Superior and Key-West with respect to the operation of the asphalt plant at the Sumas Property. Also in 2014, a building was constructed on the Sumas Property by Key West or the Employer without the approval of the Sumas First Nations. Subsequently, at the direction of Mr. Dhatt, assets were removed from the asphalt plant on the Sumas Property, resulting in the permanent closure of the asphalt plant in or about December 2014.

19. The Complainants worked at the asphalt plant at the Sumas Property between May 2013 and December 19, 2014, before it closed.
20. Mr. R. Lalli was a brother of Mr. H. Lalli.
21. The Complainants regularly submitted timesheets with their hours of work to the Office Manager at the asphalt plant, Ruby Grewal (“Ms. Grewal”). The timesheets were each headed “Superwest”.
22. Superwest held a bank account at the Canadian Western Bank, and Mr. H. Lalli and Mr. Dhatt were authorized signatories on that account. This account was used to pay employees, including the Complainants.
23. At some point in 2014, the Complainants started receiving wages from a bank account in the name of “Key-West Asphalt Ltd. (Plant Operations)” at the Bank of Montreal (“BMO”). Both Mr. H. Lalli and Mr. Dhatt signed cheques from the BMO account. The Complainants also received wage statements with the name of Key-West Asphalt (Plant Operations) from March 29, 2014, to December 5, 2014.
24. After the shutdown of the asphalt plant at the Sumas Property in December 2014, the Complainants did not return to work as the plant closed permanently.
25. The Complainants were not paid wages earned during their last two (2) weeks of employment, nor did they receive their annual vacation pay on termination of their employment. They also did not receive a written notice of termination or compensation for length of service.
26. The Complainants received T4 slips for the year 2014, issued by Superwest. The T4 slips show the total wages the Complainants were paid in 2014. There is no dispute between the parties with respect to the hours worked by the Complainants or wages paid to them.
27. At pages R4 to R8 of the Reasons, the delegate summarizes the evidence and arguments proffered by the Complainants; Mr. Dhatt, by his legal counsel, Christopher Ness (“Mr. Ness”); and Mr. H. Lalli, by his accountant, Mr. Singh, which I have carefully read but do not find it necessary to set out verbatim herein.
28. As the only issue in the appeal of Superior is whether the Director erred in law in deciding Superior was an employer under the *Act*, and could be associated, under section 95 of the *Act*, with other entities named in the Determination, I will not refer to the evidence of the parties and decisions of the delegate pertaining to any other questions decided in the Determination.
29. Having said this, in considering the question of whether Superior, Superwest, and Key-West should be associated together as one employer under section 95 of the *Act*, the delegate considered the following four (4) preconditions to the application of section 95:
  1. There must be more than one corporation, individual, firm, syndicate, or association;
  2. Each of these entities must be carrying on a business, trade or undertaking;
  3. There must be common control or direction; and
  4. There must be some statutory purpose for treating the entities as on[e] employer.
30. In concluding that all four (4) preconditions above were satisfied in this case to associate Superwest, Key-West, and Superior as one employer under section 95 of the *Act*, the delegate reasoned as follows:

- a. Each corporation – Superwest, Key-West and Superior - was carrying on a business, trade or undertaking.
- b. All three entities were involved in the operation and financial workings of producing asphalt at the plant where the Complainants worked for the following reasons:
  - A joint venture was undertaken between Key-West and Superior, resulting in the creation of Superwest, which was the legal entity that initially hired and employed the Complainants.
  - The Complainants submitted timesheets under the Superwest name and received wages and wage statements from Superwest.
  - The Complainants were issued wages from a Canadian Western Bank account in the name of Superwest, of which both Mr. H. Lalli and Mr. Dhatt were authorized signatories.
  - On September 18, 2013, a Bill of Sale and JV Agreement were executed between Superior and Key-West.
  - Under the terms of the Bill of Sale, Key-West purchased equipment and chattels located on the Sumas Property for the sum of \$10.00.
  - Under the terms of the JV Agreement, Key-West and Superior agreed to be joint venturers with each having a 50% interest in the joint venture.
  - The JV Agreement set out the responsibilities, obligations and goals of Superior and Key-West, including the management and ownership of joint venture assets.
  - Mr. Singh contended that the Bill of Sale established Key-West as the legal owner and operator of the asphalt plant and tangible assets, thereby removing Superior and Mr. H. Lalli of all liability. Mr. Singh further argued that the spirit of the JV Agreement was not honoured by Key-West, and the latter contravened the JV Agreement by exercising 100% control of the asphalt plant.
  - Mr. Ness, on behalf of Mr. Dhatt, argued that the Bill of Sale was solely to allow Superwest to re-finance its approximate \$1,600,000 loan through BMO. The JV Agreement sets out the actual assets ownership between Key-West and Superior with each party having 50% ownership interest.
  - Mr. Ness' evidence that Key-West and Superior continued to operate the asphalt plant jointly after the JV Agreement was executed on September 18, 2013, and Superwest continued to be a legal entity involved in the operation of the business was preferable over Mr. Singh's.
  - There was no dissolution of Superwest recorded in the BC Registry or otherwise, and that wage statements, timesheets, T4's, GST returns and wages issued from the Superwest bank account indicated it continued to operate well past the Bill of Sale and JV Agreement date.
  - In March 2014, the Complainants started receiving wage statements from Key-West, although Superwest timesheets continued to be used by the Complainants.
  - Payroll cheques from Superwest's bank account at the Canadian Western Bank continued to be issued to the Complainants as late as April 2014.

- There was no clear evidence as to when the Complainants began receiving payroll cheques from Key-West's BMO account but it was probably around May 2014, consistent with Mr. Ness' estimation of when the operations account was moved from the Canadian Western Bank to BMO.
  - Superior and Key-West deposited funds to the BMO account held in the name of Key-West Asphalt (Plant Operations), which were then used to operate the asphalt plant where the Complainants worked.
  - By December 2014, the Complainants routinely received wage statements from Key-West, and wages were drawn on Key-West's BMO account, of which Mr. Dhatt was the primary account holder.
  - Key-West's BMO bank account was likely opened pursuant to the JV Agreement between Superior and Key-West, with signatories from both of these companies.
  - Although Mr. H. Lalli did not have authorization to access Key-West's BMO account, he exercised his right to sign cheques on the BMO account from time to time, which showed that he continued to be involved in the operation of the asphalt plant.
- c. In an email, dated December 4, 2014, between Mr. Kasper and Mr. H. Lalli, the latter approved Mr. Kasper's plan of action and provided him instructions which evidenced that Mr. H. Lalli continued to direct employees at the asphalt plant.
- d. The Complainants called Mr. H. Lalli to inquire about their outstanding wages, indicating that Mr. H. Lalli played a role within the asphalt plant.
- e. Superwest issued T4 slips and filed GST returns for the 2014 tax year.
- f. While Mr. Singh contends that the T4 slips filed by Superwest were fraudulently filed, as Ms. Grewal did not have authority to do so, there is no evidence substantiating Mr. Singh's allegation.
- g. Mr. Singh's contention that the Ministry of Finance determined Key-West is responsible for the PST collected is unsupported in the letter he provided, which only indicates that an adjustment was made by CRA with respect to the PST liability of Superwest without any attribution of liability to Key-West.
- h. Even if CRA's letter did support Mr. Singh's contention that Key-West was liable for the PST, this does not exclude Superwest as an employer of the Complainants.
- i. The corporate registry searches indicated that the three (3) companies were under common direction and control. More particularly, the corporate registry searches showed that Mr. Dhatt is the sole director of Key-West; Mr. Dhatt and Mr. H. Lalli are joint directors of Superwest; and Mr. H. Lalli is the director of Superior.
- j. The statutory purpose for associating the companies is the need to recover wages for the Complainants as the business ceased to operate and the assets have been removed.

31. As indicated previously, based on the above evidence, the delegate associated Key-West, Superwest, and Superior as one employer pursuant to section 95 of the *Act*, and held the three entities jointly and severally liable for wages owed to the Complainants.

## SUBMISSIONS OF SUPERIOR

32. In his written submissions on behalf of Superior, Mr. Singh contends that the Director erred in law in associating Superior with Superwest and Key-West under section 95 of the *Act*. He then reproduces section 95 of the *Act*, and the four (4) preconditions relevant to the application of section 95 (set out in paragraph 29 above). Mr. Singh, then, under separate headings for each precondition indicates whether he or Superior agree or disagree with the delegate's conclusion.
33. With respect to the first precondition, Mr. Singh indicates the Director is correct in concluding that Superwest, Key-West, and Superior are three (3) separate legal entities. He adds that Superwest is a legal entity that was formed as a joint venture between Key-West and Superior, and has two (2) directors, Mr. Dhatt and Mr. H. Lalli. He further adds that Key-West is "controlled 100%" by Mr. Dhatt, and Mr. H. Lalli has no ownership in Key-West. Similarly, he states that Superior is "controlled 100%" by Mr. H. Lalli, and Mr. Dhatt has no ownership interest in Superior.
34. With respect to the second precondition, Mr. Singh disputes the Director's conclusions of fact that each corporation – Superwest, Key-West, and Superior – was carrying on a business, trade or undertaking, and together involved in the operation and financial workings of producing asphalt at the plant where the Complainants worked. In support of his contention, he primarily advances the same arguments and evidence he adduced during the investigation of the Complaints and contained in the Record, some of which is referred to in the Reasons. More particularly, he submits that:
- After the Bill of Sale, dated September 18, 2013, was executed between Key-West and Superior, Key-West "acquired legal control of the Asphalt Plant" and "Superwest no longer remained the active entity involved in the operation of the Asphalt Plant, and became the 100% beneficiary of the Asphalt Plant pursuant to a Bare Trust Agreement" (although the bare Trust Agreement does not support such a conclusion).
  - It was "simply an accounting error" that Superwest's bank account was used to pay wages to the employees, including the Claimants, after the JV Agreement and Bill of Sale in September 2013. The funds in the Superwest bank account should have been transferred to Key-West, and the latter should not have used Superwest's bank account.
  - It was an error and an oversight "due to lack of competence of the Key-West staff" that Key-West only began to issue wage statements in March 2014, and not as early as October 2013.
  - The T4 slips and GST returns filed by Superwest for the 2014 tax year "were made fraudulently by Key-West accounting staff without the prior authorization or consent of Mr. Harjit Lalli".
  - Key-West accounting staff attempted to create a PST liability for Superwest for the 2014 taxation year but the Ministry of Finance, after conducting an audit, made an adjustment to the originally-assessed PST liability against Superwest.
  - He was told by a CRA representative that the PST liability in the amount of \$535,000.00 would now be assessed to Key-West, and asks the Tribunal to contact the CRA representative to confirm what he was told.
  - It was determined under the Ministry of Finance's audit that Key-West was operating the asphalt plant in 2014 and it invoiced customers and collected payments and PST from them and deposited these funds into Key-West bank accounts, and not Superwest's bank accounts (but no documentary evidence from the Ministry is produced to substantiate this representation).

- Mr. H. Lalli did not continue to direct employees until the termination of the Complainants' employment; he was simply contacted by the Complainants after the termination of their employment because they were "frustrated due to the lack of contact with Key-West staff" who failed to return their calls when they were attempting to collect wages and severance due to them from Key-West.
- Superwest only had an "indirect role in the asphalt plant operations up to May 2014 due to the continued use of the Canadian Western Bank account". This account was not used after May 2014.

35. In the circumstances, Mr. Singh argues that the Director has failed to establish that Superior was involved with the other two (2) entities in the operation and financial workings of producing asphalt at the plant where the Complainants worked and, therefore, the second precondition for associating legal entities under section 95 has not been met.
36. With respect to the third precondition, Mr. Singh disputes the Director's conclusion of fact that all three (3) companies were under common direction and control. As with his submissions during the investigation of the Complaints, he argues that the only entity that was under common direction and control was Superwest because Mr. Dhatt and Mr. H. Lalli were both directors of this company. However, he argues that Mr. Dhatt owned 100% of voting shares of Key-West that, in turn, owned 50% of the voting shares of Superwest. Mr. H. Lalli owned 100% of voting shares of Superior, which owned 50% of the voting shares of Superwest. He states neither Key-West, nor Superior, had legal control over Superwest, as both entities owned only 50% of the voting shares of Superwest, but Key-West exercised "de facto control as it had direct and indirect influence over the affairs of Superwest".
37. He further argues that the JV Agreement provided that Key-West is the "Operator" and responsible for the day to day operations of the asphalt plant. He also submits that Key-West became the "legal owner of the asphalt plant as a result of the Bill of Sale Agreement" and the "\$5M Bank of Montreal financing". Superior, however, did not have any involvement or interest in the BMO financing nor any common direction or control of the asphalt plant with either Superwest or Key-West. Only Key-West and Superwest shared common control and direction over the operation of the asphalt plant, together with Mr. Dhatt.
38. With respect to the fourth precondition, Mr. Singh again disagrees with the Director's conclusions. He states that "associating Superior" to Key-West and Superwest "without having met the requirements" of the second and third criteria above "contravenes the intention of Section 95" and "goes against the spirit of this law".
39. In his further written submissions to the Tribunal in his email of November 20, 2015, Mr. Singh reiterates his earlier submissions in the investigation of the Complaints that CRA adjusted Superwest's payroll after conducting a Payroll Trust Examination "such that Superwest is only legally responsible for payroll remittances for the period January 1, 2014 to April 4, 2014". He states that although he is of the view that Superwest was not the employer of the Complainants during "the entire calendar year 2014", the alleged finding of CRA "demonstrates that CRA does not find Superwest legally responsible for the payroll tax withheld from [the Complainants] after April 4, 2014". In the result, he argues that Key-West "was determined to be the employer of [the Complainants] for the period April 4, 2014 to December 31, 2014 and ... legally responsible for the payroll taxes owing on these wages". However, Mr. Singh does not provide any documentation to this effect, and states that he "will provide further evidence as soon as he is in direct contact with the CRA Trust Examination Auditor".



40. In his subsequent email of December 7, 2015, to the Tribunal, Mr. Singh states he has not received any additional documentation from CRA to submit to the Tribunal. However, he reiterates his previous argument to the delegate that a subsequent adjustment by the Ministry of Finance of Superwest’s originally-assessed tax liability for PST demonstrates Superwest “was not carrying on a business after April 2014 and not legally responsible for any PST or payroll tax liabilities outstanding”.
41. He then requests the Tribunal to contact a Ravinder Badesha (“Mr. Badesha”), a Team Leader of PST Audit Division, for “further clarification or confirmation of the PST taxes being reassessed to Key-West Asphalt Ltd.”. He states that he was unable to receive written evidence in this regard due to confidentiality and privacy reasons.

## ANALYSIS

42. An appeal under the *Act* is intended to be an error correction process, with the burden on the appellant to persuade the Tribunal that there is an error in the determination under one of the statutory grounds of review set out in section 112(1) of the *Act*, which states:

### Appeal of director’s determination

- 112** (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;
  - (c) evidence has become available that was not available at the time the determination was being made.

43. It should be noted that the *Act* does not provide for an appeal based on errors of fact, and the Tribunal has no authority to consider appeals based on alleged errors in the findings of fact, unless such findings raise an error of law (see *Britco Structures Ltd.*, BC EST # D260/03). In *Britco Structures Ltd.*, the Tribunal noted that the test for establishing an error of law on this basis is stringent and requires the appellant to show that the findings of fact are perverse and inexplicable, in the sense that they are made without any evidence, that they are inconsistent with and contradictory to the evidence or they are without any rational foundation.
44. Having said this, Mr. Singh, on behalf of Superior, invokes the error of law ground of appeal to argue that the Director erred in associating Superior with the other two (2) entities – Superwest and Key-West – under section 95 of the *Act*.
45. Section 95 of the *Act* states:

### Associated employers

- 95** If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,
- (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one employer for the purposes of this Act, and

- (b) if so, they are jointly and separately liable for payment of the amount stated in a determination, a settlement agreement or an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

46. In *Invicta Security Systems Corp.*, BC EST # D349/96, the Tribunal examined the language of section 95, and identified four (4) preconditions to its application (which the delegate, as noted earlier, considered in making her determination to associate all three entities as one employer), namely:

1. There must be more than one corporation, individual, firm, syndicate, or association;
2. Each of these entities must be carrying on a business, trade or undertaking;
3. There must be common control or direction; and
4. There must be some statutory purpose for treating the entities as one employer.

47. The Tribunal, in *Invicta, supra*, also went on to explain how each of these preconditions would apply as follows:

The reference to ‘corporation, individual, firm, syndicate or association[.]’ in the first precondition is sufficient to capture any legal vehicle through which a business may be conducted. The second precondition requires the entities sought to be included in a Section 95 determination to be ‘carrying on’ a business, trade or undertaking, in the sense that the entity is not defunct or completely withdrawn from the business, trade or undertaking which would bring them into a Section 95 determination. The third precondition is directed toward the manner in which the various entities inter-relate within the common enterprise. One entity may have financial control, another may have operational control and yet another may have *de facto* control through majority shareholding or control of the Board of Directors. These examples are not meant to be exhaustive, but illustrative of how control may be demonstrated. Similarly, direction may be demonstrated in a variety of ways, but generally it will normally be found in an entity which makes significant decisions respecting how the business, trade or undertaking has been, is, or will be, run.

The final precondition identifies the need for a statutory purpose. One of the purposes of the *Act* is to ensure employees in the province receive the basic standards of compensation and conditions of employment. The *Act* not only sets the basic standards of compensation and conditions of employment but also provides a comprehensive scheme for the enforcement of the *Act*, including some collection procedures such as claims of lien, court order enforcement and seizure of assets in appropriate circumstances. It is in the enforcement provisions of the *Act* where Section 95 has been placed. The statutory purpose requirement is met if the one employer determination is for the purpose of enforcing basic standards of compensation and conditions of employment. It is not inconsistent with that purpose to make the one employer declaration for the purpose of facilitating the collection of wages owing under the *Act*.

48. In the circumstances of this case, the first criterion, or precondition, is not in dispute as Mr. Singh admits in his submissions that he agrees with the Director’s conclusion that there are three (3) separate legal entities involved, namely, Superwest, Key-West and Superior.

49. However, he disputes the Director’s conclusions relating to the second, third and fourth preconditions under section 95 of the *Act*, stating that none of these conditions were met in this case.

50. More particularly, with respect to the second precondition, while Mr. Singh contends that the delegate failed to establish that the three (3) companies were involved in the operation and financial workings of producing asphalt at the plant where the Complainants worked, his submissions in support of this contention largely amount to a re-argument of submissions he previously made during the investigation of the Complaints. His

submissions are also largely in the nature of a dispute with the delegate's findings, or conclusions, of fact. Having said this, I note that the standard of review for error of law is "correctness". In the context of an alleged error relating to findings of fact, it is instructive to look at the British Columbia Court of Appeal decision in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* [1998], BCJ. No. 2775 (BCCA), in which the Court of Appeal considered the following elements of "error of law":

1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
2. a misapplication of an applicable principle of general law;
3. acting without any evidence;
4. acting on a view of the facts which could not reasonably be entertained; and
5. adopting a method of assessment which is wrong in principle.

51. While there may be some instances where errors of fact may give rise to errors of law, this is not such a case. I find that the delegate had ample evidence, as particularized above in paragraph 30(b) to (e) inclusive, to reasonably conclude that all three (3) companies were, indeed, involved in the operation and financial workings of the asphalt plant where the Complainants were employed. While Mr. Singh and Superior do not agree with this conclusion, the delegate's conclusion does not come within the meaning of "error of law", as defined in *Gemex*.
52. As with the last submissions, I find Mr. Singh's submissions on the third precondition, namely, that the Director erred in concluding that all three (3) companies were under common direction and control, to be in the nature of a re-argument of the submissions he made during the investigation of the Complaints. These submissions also dispute the delegate's findings of fact and do not amount to an error of law as defined in *Gemex, supra*. To the contrary, I find, based on the evidence particularized in paragraph 30(a) to (d) and (i) above, it was open to the delegate to reasonably conclude as she did, that is, the three (3) companies were under common control and direction.
53. Finally, with respect to precondition 4, I find Mr. Singh's contention that "associating Superior" to Key-West and Superwest "without having met the requirements" of preconditions 2 and 3 "contravenes the intention of Section 95" or "goes against the spirit of this law", without merit and not persuasive. As indicated above, I find that both preconditions 2 and 3 of section 95 were sufficiently met in this case. I also find that associating Superior, Superwest and Key-West as one employer under section 95 of the *Act* meets "the statutory purpose" requirement of precondition 4; it allows for the enforcement of basic standards of compensation and conditions of employment, namely, the collection of wages owing to the Complainants.
54. In these circumstances, I find that the delegate's decision to declare Superior, Superwest and Key-West as one employer under section 95 of the *Act* was justified, and there is no basis for me to interfere with this decision.
55. Having said this, I note that Mr. Singh has asked the Tribunal to contact the Ministry of Finance's Mr. Badesha who "can provide further clarification or confirmation of the PST taxes being reassessed to Key-West Asphalt Ltd.". In the Reasons, the delegate also notes that Mr. Singh produced a letter from the Ministry of Finance dated July 22, 2015 (a copy of which is in the Record) wherein the Ministry appears to have adjusted the amount originally assessed against Superwest for PST for the period April 1, 2013, to October 31, 2014. Based on this letter, Mr. Singh represented previously in the investigation of the Complaints, and now in the appeal, that the Ministry determined Key-West was responsible for the PST collected in 2014. However, that representation was not borne out by the letter from the Ministry, which was silent on any liability of Key-West and only adjusted Superwest's PST liability. As indicated, Mr. Singh now

wants the Tribunal to contact the Ministry's representative, Mr. Badesha, to confirm that Key-West is indeed liable for PST collected in 2014, presumably to support his argument that Superwest ceased operating in April 2013, and Key-West was the sole employer of the Complainants.

56. While the Tribunal, under section 109(1)(g) of the *Act*, has authority to require Mr. Badesha, either orally or in writing, to disclose, under oath or affirmation, any information under the *Act*, I do not find it necessary in this case to exercise that authority, as I agree with the delegate that even if Key-West was liable for the PST, this does not exclude Superior or Superwest as an employer of the Complainants. More particularly, any ruling of the Ministry of Finance against Key-West, in my view, is not relevant to a material issue arising from the Complaints, and would have little probative value for the same reason. The opinion or decision of the Ministry of Finance against Key-West is not determinative of whether Superior or Superwest, or either of them, are one employer with Key-West, within the meaning of section 95 of the *Act* for employment standards purposes. The purposes of the *Provincial Sales Tax Act* are not the same as those of the *Act*. For example, one of the purposes of the *Act*, set out in section 2(a) is to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment. This is not a purpose of the *Provincial Sales Tax Act* administered by the Ministry of Finance.

## **ORDER**

57. Pursuant to section 114(1)(f) of the *Act*, I dismiss the appeal. Accordingly, pursuant to section 115(1) of the *Act*, the Determination, dated September 23, 2015, is confirmed, together with any further interest that has accrued under section 88 of the *Act* since the date of issuance.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**